

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Suzanne Donnelly	Team: Team # 2	CCRB Case #: 200717960	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/21/2007 7:45 AM	Location of Incident: In front of 1280 Pacific Street and inside the 77th Precinct	Precinct: 77	18 Mo. SOL 5/21/2009	EO SOL 5/21/2009	
Date/Time CV Reported Thu, 12/13/2007 2:33 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 12/13/2007 2:33 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Darryl Chen	29402	903608	077 PCT
2. POF Trina Daniels	05698	921260	077 PCT
3. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT John Sharkey	00000	918319	077 PCT
2. POM Edwin Diaz	02219	934766	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Darryl Chen	Abuse: Officer Darryl Chen stopped § 87(2)(b)	
B.POM Darryl Chen	Force: Officer Darryl Chen used physical force against § 87(2)(b)	
C.POF Trina Daniels	Force: Officer Trina Daniels used physical force against § 87(2)(b)	
D.POF Trina Daniels	Force: Officer Trina Daniels used pepper spray against § 87(2)(b)	
E.POM Darryl Chen	Abuse: Officer Darryl Chen did not obtain medical treatment for § 87(2)(b)	
F.POF Trina Daniels	Abuse: Officer Trina Daniels did not obtain medical treatment for § 87(2)(b)	
G. Officers	Abuse: Officers did not obtain medical treatment for § 87(2)(b)	

Synopsis

On December 13, 2007, § 87(2)(b) called the CCRB to file a complaint in regards to an incident that occurred on November 21, 2007. § 87(2)(b) stated that on November 21, 2007 at approximately 7:45AM in front of 1280 Pacific Street in Brooklyn, PO Darryl Chen and PO Trina Daniels of the 77th Precinct stopped him (Allegation A). PO Chen searched § 87(2)(b) while PO Daniels searched the bags he was carrying. PO Chen and PO Daniels then pushed § 87(2)(b) to the ground, and PO Chen landed on § 87(2)(b)'s right ankle (Allegations B and C). As PO Chen placed § 87(2)(b) under arrest, PO Daniels sprayed him with pepper spray (Allegation D). § 87(2)(b) sustained an injured right ankle during the arrest, and he requested medical attention from PO Chen and PO Daniels several times on the scene, in the patrol car, and from them and other officers at the 77th Precinct; however, his requests were ignored (Allegations E, F, and G) until he was removed to § 87(2)(b) on November 23, 2007.

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) (Enclosures 6A-B, 7A-C, 8A, 9A-D)

§ 87(2)(b) a § 87(2)(b)-old black male, was interviewed at § 87(2)(b) on January 9, 2008. § 87(2)(b)

On November 21, 2007 at approximately 7:45AM near 1280 Pacific Street in Brooklyn, § 87(2)(b) was walking down the street headed to visit a friend. He was previously at § 87(2)(b) where he sometimes helps the super, § 87(2)(b) and another employee, § 87(2)(b) with jobs in the building. § 87(2)(b) had gone to see these individuals to see if they had any work for him to do, but they were not available at the time. He was inside the building for 10-15 minutes. § 87(2)(b) had left § 87(2)(b) just “minutes” before encountering police officers near 1280 Pacific Street. On the date of the incident, § 87(2)(b) was wearing a black jacket with a “Fat Albert” signature on it, black pants, a black vest, a blue shirt, and a hat. In his hands, § 87(2)(b) was carrying a duffel bag and a black shopping bag which contained movies, tapes, personal clothing, and an amp. § 87(2)(b) was walking down Pacific Street toward Nostrand and Bedford Avenues; he was going to meet a friend to give him some of the merchandise he had in his possession. § 87(2)(b) did not speak or interact with anyone at any point when he was walking. There were not many people in the area, although § 87(2)(b) saw a few people who were possibly headed to work. The area is mainly residential. As he was walking, § 87(2)(b) observed a marked patrol car pull over in between two cars. Two officers exited the vehicle and approached him. § 87(2)(b) recognized one of the officers as Officer Chen of the 77th Precinct. § 87(2)(b) has encountered Officer Chen three or four times in the past and that is how he knew Officer Chen’s name. § 87(2)(b) described Officer Chen as a short black male, approximately 5’7-5’8, 200lbs, late 30s/early 40s, brown complexion, and dressed in a uniform. Officer Chen was with a female partner, PO 2, whom § 87(2)(b) believes has been Officer Chen’s partner for some time because he has seen them working together on a few occasions. He described PO 2 as a black female with a dark brown complexion, approximately 5’5, 130-140lbs, late 30s/early 40s, also dressed in uniform. PO 2 has been identified through the CCRB investigation as Officer Trina Daniels of the 77th Precinct. Officer Chen and Officer Daniels exited their vehicle and approached § 87(2)(b). Officer Chen stated, “Hey, how are you doing, where are you going, let me search you for a minute.” He also asked who was selling drugs and asked § 87(2)(b) if he had “anything on” him.

§ 87(2)(b) stopped walking and stood still. Officer Chen searched inside § 87(2)(b)'s back and front pants pockets, his side jacket pockets, and around his shoes. Officer Chen removed a lighter, pens, a box cutter, and fingernail clippers from § 87(2)(b)'s pockets and threw the items to the ground. During this time, Officer Daniels searched inside § 87(2)(b)'s bags, which were in his hands, and pulled items out of the bags. § 87(2)(b) told Officer Chen and Officer Daniels that he had someone to meet and things to do, and he asked why he was being searched. At this point, Officer Chen became angry that § 87(2)(b) was asking him about his job function, and he got aggressive toward § 87(2)(b). Officer Chen and Officer Daniels forcefully "threw" § 87(2)(b) onto the ground. § 87(2)(b) could not recall where the officers grabbed him on his body or how exactly he was thrown onto the ground. He stated that Officer Daniels had less physical contact with him because while § 87(2)(b) was still in a standing position and was being forced onto the ground, Officer Daniels was repeatedly pepper spraying him in his face. § 87(2)(b) could not estimate how many times Officer Daniels pepper sprayed him. § 87(2)(b) was taken to the ground, face-and chest-down, and Officer Chen "jumped" on top of him, on his right leg and ankle. § 87(2)(b) believed that this was intentional. He heard and felt his right leg "snap." Officer Daniels continued pepper spraying § 87(2)(b) in his face while he was on the ground, and Officer Chen handcuffed him. § 87(2)(b) did not sustain any other injuries when he was taken to the ground. During this time, § 87(2)(b) was screaming that he was injured and that his leg was broken. He was also screaming because his eyes were burning from the pepper spray. § 87(2)(b) heard a woman yelling in the background, "Don't do that to him," but he did not know who this woman was, where she had come from, or how long she was there for. He was unable to see her due to the pepper spray in his eyes, but he believed that she may have known him or recognized him because he is known throughout the neighborhood because he does odd jobs. § 87(2)(b) continued screaming and attempted to wipe his eyes on the shoulder of his jacket because he was handcuffed. Officer Chen lifted § 87(2)(b) up from off the ground. § 87(2)(b) could not walk and that his leg was broken he told the officers he could not walk. § 87(2)(b) told the officers on the scene that he wanted to go to the hospital. Officer Chen responded, "We'll talk about this down at the precinct."

Officer Chen and Officer Daniels helped escort § 87(2)(b) to their patrol car and then transported him to the 77th Precinct. Officer Daniels drove the vehicle. Inside the vehicle, § 87(2)(b) again requested medical attention, but the officers ignored him. Upon arriving at the precinct, Officer Chen and Officer Daniels had to "drag" § 87(2)(b) out of their patrol car to get him inside the precinct, because § 87(2)(b) was physically unable to walk. Inside the precinct, § 87(2)(b) told Officer Chen that he wanted to go to the hospital and that he needed to see a doctor. Officer Chen ignored § 87(2)(b)'s request and did not call EMS. § 87(2)(b) also stated during his CCRB interview that it is "standard" procedure for the officers to get medical attention for him because he was pepper sprayed. However, § 87(2)(b) was never offered EMS. Officer Chen sat § 87(2)(b) down in a chair and another officer, PO 3, with dark hair, light skin in his early 30s arrived with a bottle of water. One of the officers poured water from a bottle on § 87(2)(b)'s face in order to irrigate his eyes and rinse off the pepper spray. PO 3 had been standing against a desk in the precinct earlier. § 87(2)(b) could not describe the officer who was working at the desk when he was first brought to the precinct. He was brought into a holding cell, where he remained for "three days." During the three days, § 87(2)(b) estimated that there were about 15 prisoners in the holding cells with him total at one point or another, but he did not know any of these individuals.

After his interaction with Officer Chen at the 77th Precinct on the date of his arrest, § 87(2)(b) did not have any other interaction with Officer Chen and he did not see him in the precinct again. § 87(2)(b) continued requesting medical attention during this time but was ignored by various officers who he could not describe. He refused to go to Central Booking several times and demanded to go to the hospital, but he was not taken. § 87(2)(b) believed that the officers were mainly concerned about seeing a judge because they kept trying to get him to agree to go to Central Booking. During his CCRB interview, § 87(2)(b) stated that he would not be able to identify any additional officers at the stationhouse because his thinking was "distorted" due to the pain he was in. The officers did not take § 87(2)(b)'s injury seriously; he overheard officers comment that he was going to win an Oscar for his performance. On Thanksgiving Day, an officer slid a Snickers bar into the cells and wished him a Happy Thanksgiving sarcastically.

EMS responded to the precinct for § 87(2)(b) on Friday evening and he was transported via ambulance with a female police escort to § 87(2)(b) according to § 87(2)(b)'s paperwork. He remained there for 2-3 hours. After being examined and x-rayed, § 87(2)(b) was informed

that he needed to be admitted and that he would need surgery. Instead however, a splint was placed on § 87(2)(b)'s leg and he was taken back to the 77th Precinct, where he remained until the following day, when he was brought to Central Booking. No judge could see him at that time, so § 87(2)(b) returned to the 77th Precinct and remained there until Monday morning, at which time he went before a judge. § 87(2)(b) pleaded out because he needed medical attention and did not want to be sent to Riker's. § 87(2)(b) pleaded guilty to a possession charge for a crack stem, and some additional charges against him were "thrown out." § 87(2)(b) stated that Officer Chen never reached into his pocket and recovered the crack stem, but he somehow recovered it. § 87(2)(b)'s lawyer, § 87(2)(b), later interjected that § 87(2)(b) never stated a crack stem was recovered and he only stated that was his charge. § 87(2)(b) was released from Central Booking after midnight (Tuesday morning), at which point he returned to § 87(2)(b) to be treated. § 87(2)(b) was treated and his surgery was scheduled for § 87(2)(b). On that date, he underwent surgery for a broken right ankle, and pins and a plate were permanently situated in his ankle and leg. At the time of his interview, § 87(2)(b) was recovering from his surgery in § 87(2)(b). He planned on filing a lawsuit for physical and psychological injuries.

Results of Investigation

Efforts to Locate/Interview Additional Witnesses (See Investigative Actions, Enclosures 30A-U)

§ 87(2)(b) stated that he overheard a female witness at the time of the incident, but he did not know the identity of that woman at the time of his CCRB statement. On March 27, 2008, § 87(2)(b) called the investigator and stated that he spoke with a resident who lives at § 87(2)(b). The resident stated that his sister, § 87(2)(b), was a witness to the incident. § 87(2)(b) did not know § 87(2)(b)'s last name or where exactly she lived, but he stated he was going to attempt to obtain that information and call the investigator, but he did not do so. On May 29, 2008, the investigator made a follow-up phone call to § 87(2)(b) who stated that he has not spoken with § 87(2)(b) and is not sure she wants to participate in the investigation. Again, § 87(2)(b) stated that he would have § 87(2)(b) call the CCRB if he is able to speak with her and if she is willing. A call from § 87(2)(b) was never received.

Canvass

On the afternoon of January 23, 2008, the investigator conducted a canvass in the vicinity of 1280 Pacific Street (arrest location) in Brooklyn. The investigator spoke with 2 residents of § 87(2)(b), § 87(2)(b) and § 87(2)(b), who were exiting § 87(2)(b) as the investigator arrived at the location. Neither § 87(2)(b) nor § 87(2)(b) witnessed the incident, but they agreed to give please call letters to the super of the building to post in case anyone witnessed the incident. They also offered to speak to the neighbors because many members of the community have had problems with the 77th PCT officers. One photograph was taken of the area. The area is residential; 1280 Pacific is directly across the street from a large empty lot and in the middle of the block. There are no homes opposite 1280 Pacific Street. There are apartment buildings adjacent to 1280 Pacific Street and the nearest store is at the corner. Two letters were slipped under the doors of the buildings on either side of 1280 Pacific Street, because the doors were locked and access to mailboxes could not be obtained.

Witness Letters (Enclosures 31A-EE)

Searches were conducted in BADS to obtain addresses for prisoners who may have been in the holding cells with § 87(2)(b) at some point during his time at the 77th Precinct. Letters were mailed to the homes of 11 potential witnesses on April 22, 2008. Six of those letters were returned to the investigator as undeliverable. On April 29, 2008, one of the prisoners' attorneys, § 87(2)(b) called the investigator for more information and offered to speak to his client in regards to the incident and have him call the investigator if he recalled the incident. A return call was never received. On May 29, 2008, final please call letters were mailed to the five individuals whose initial letters were not returned to the CCRB. To date, none of these individuals have attempted to contact the investigator.

Officer Interviews

PO Darryl Chen (Enclosures 12A-B, 13A-B)

Police Officer Darryl Chen was interviewed at the CCRB on April 1, 2008. On November 21, 2007, PO Chen worked a tour of 0530 by 1405 and was assigned as Conditions for the 77th Precinct. PO Chen worked with PO Daniels, and he was the operator in marked RMP # 2082. PO Chen was dressed in uniform. PO Chen had an entry in his memo book pertaining to this incident which he read as follows: “0745, 1 male under in front of 1280 Pacific Street; 0800, 62A to the Precinct.”

When PO Chen was asked to describe the incident, he stated that he had to “be honest, I know I have an arrest that day, I don’t recall the individual or exactly what happened that day.” There was nothing remarkable to PO Chen about that day or that particular arrest. PO Chen then viewed § 87(2)(b)’s arrest photo; he stated that § 87(2)(b) looks “familiar,” but he knows “a lot of guys in the neighborhood, but I don’t know if that’s the guy I placed under arrest that day.” PO Chen brought a copy of the OLBS with him to his CCRB interview. He stated that he looked up the arrest to try to refresh his memory, but it did not help. Some of the details of the OLBS were reviewed with PO Chen – that § 87(2)(b) had a crack pipe in his possession. PO Chen did not specifically recall anyone with a crack pipe on the incident date. However, he stated that “normally, when I place somebody under arrest, it’s something I’ve seen.” PO Chen stated that “the only thing I can say is that I made a lot of arrests that year, I made over 100 arrests... exactly 110 arrests.” He added that he is familiar with Pacific Street and it is drug-prone and his command gets numerous complaints from residents and store owners in the area about drug activity in that area every day. Specifically, 1280 Pacific Street, which he provided is between New York and Nostrand Avenues, is “all drugs.” PO Chen has worked in this area for 15 years and is very familiar with it; he patrols the block where the incident took place often. He stated that he assumed this particular job was a “pick-up” job. He stated, “This incident, I can’t really recall it that much... I can’t really recall it at all.” PO Chen stated that when officers make arrests, they will call over to Central to obtain an arrest time and then call a supervisor to come and verify the arrest. However, PO Chen could not recall whether this happened during § 87(2)(b)’s arrest. PO Chen could not recall if Lt. Sharkey was the Desk Officer on the incident date.

PO Chen was then informed of some of § 87(2)(b)’s allegations – that he was stopped by PO Chen and PO Daniels, he and his bag were searched, and he was placed under arrest. PO Chen was also told that § 87(2)(b) alleged that he was pepper sprayed. PO Chen stated that he did not recall any of this. PO Chen stated that he charged § 87(2)(b) with resisting, and usually when he charges someone with resisting it means they are “not cooperative,” swinging arms and refusing to be handcuffed. PO Chen stated that this “happens a lot,” but he did not remember the details of this incident and could not say whether or not it occurred or if force was used. PO Chen was then informed that § 87(2)(b) sustained an injury to his leg, but PO Chen did not recall any injured prisoner, did not have anything documented about an injured prisoner, and did not recall anyone expressing injury or requesting medical attention. PO Chen stated that when he places someone under arrest and knows or is made aware of an injury, he lets the supervisor know and then calls EMS.

PO Chen stated that after he makes an arrest, he places the prisoner into the cells and begins doing paperwork. Once he begins doing his paperwork, another officer is assigned to watch the room with all of the prisoners. He stated that he periodically checks on his prisoner to make sure “everything is alright” but the officer watching the prisoners would take prisoners to the bathroom and would get the prisoners something to eat. PO Chen stated that there have been times where prisoners have gotten sick and officers watching the prisoners or a supervisor will call EMS. PO Chen never became aware that § 87(2)(b) had sustained a fractured leg or any other injury.

PO Trina Daniels (Enclosures 14A, 15A-B)

Police Officer Trina Daniels, a § 87(2)(b) old black female, was interviewed at the CCRB on April 29, 2008. On November 21, 2007, PO Daniels worked a tour of 0705 by 1540 hours and was assigned as Summons Auto. She was working with PO Chen and was dressed in uniform. PO Daniels was assigned to a marked RMP in which she was the operator and PO Chen was the recorder – she did not recall the vehicle number. PO Daniels did not have any entries in her memo book regarding this incident, but she recalled some details regarding the incident.

PO Daniels stated that on November 21, 2007 at approximately 7:45AM, PO Daniels and PO Chen were patrolling in the vicinity of 1280 Pacific Street, which is a drug-prone location. PO Daniels was driving the vehicle and PO Chen was the passenger. PO Chen observed § 87(2)(b) in front of 1280 Pacific Street with a crack pipe in his possession, exited the vehicle, and approached § 87(2)(b). PO Daniels did not recognize § 87(2)(b) from any previous interaction. PO Daniels could not recall what PO Chen said to her or how he alerted her to stop the vehicle. She recalled him mentioning a crack pipe. PO Daniels estimated that the RMP was about 20 feet away from § 87(2)(b). When PO Chen made the observation, the officers' vehicle was in motion, but they were driving slowly. § 87(2)(b) was on the sidewalk closest to the passenger side (not PO Daniels's side) of the vehicle. PO Daniels could not estimate how long PO Chen observed § 87(2)(b) before she pulled the vehicle over. PO Daniels never observed § 87(2)(b) with a crack pipe and she did not know where PO Chen had observed it. PO Daniels was not sure if a crack pipe was ever recovered, but she believed that it was. She herself did not recover it. PO Daniels believed that § 87(2)(b) was alone at the time of the incident. She could not recall if he was carrying anything in his hands. PO Daniels did not believe that there were any other civilians in the area and she did not recall any crowd gathering or any civilians trying to interfere.

PO Chen was the first to exit the vehicle. PO Daniels pulled the vehicle over and immediately exited. PO Daniels could not recall what PO Chen was saying and doing. When asked to describe § 87(2)(b)'s demeanor, PO Daniels stated, "I'm not sure." It was PO Chen's decision to arrest § 87(2)(b). PO Chen stated, because § 87(2)(b) had a crack pipe. PO Daniels could not recall if PO Chen struggled with § 87(2)(b) or if § 87(2)(b) resisted at all. PO Daniels could not recall if § 87(2)(b) ever attempted to flee or if PO Chen ever took § 87(2)(b) to the ground. PO Daniels never frisked or searched § 87(2)(b) on the scene; she did not recall seeing PO Chen do either of these things. No officer searched § 87(2)(b)'s property, specifically, bags he may have been carrying. PO Daniels did not recall whether PO Chen had to use any physical force against § 87(2)(b) to apprehend him. PO Daniels never had any verbal interaction with § 87(2)(b) and did not use any physical force against him. PO Daniels did not recall PO Chen using pepper spray against § 87(2)(b) and she never used pepper spray against him. PO Daniels stated that if she used pepper spray, she would remember it. She does not recall using pepper spray at all around this time. If an individual is pepper sprayed, PO Daniels would call EMS to come and treat the individual. PO Daniels did not recall having to do that for § 87(2)(b).

PO Daniels estimated that she and PO Chen were on the scene 3-4 minutes before leaving the location. § 87(2)(b) was placed in the RMP and transported to the 77th Precinct. No supervisors responded to the location to verify § 87(2)(b)'s arrest. PO Daniels did not observe any injuries on § 87(2)(b). PO Daniels did not recall § 87(2)(b) ever expressing he was injured or having any difficulty walking to the RMP. § 87(2)(b) never requested medical attention or to go to the hospital on the scene. When the officers arrived at the 77th Precinct, PO Chen escorted § 87(2)(b) into the precinct. PO Daniels did not assist in this. § 87(2)(b) did not have difficulty walking, express he was injured, or request medical attention during this time. PO Daniels was not present when § 87(2)(b) was brought before the desk, and she did not know who was working at the desk on the date of the incident. She had no interaction with § 87(2)(b) at the precinct. PO Chen processed § 87(2)(b)'s paperwork, and PO Daniels had no involvement with that. PO Daniels resumed patrol and PO Chen remained at the 77th Precinct to process the arrest.

At no time did PO Daniels observe any injuries on § 87(2)(b) or hear him request medical attention. PO Daniels has not seen § 87(2)(b) since the incident. At the conclusion of the interview, § 87(2)(b)'s arrest photo was presented for PO Daniels. She also viewed the OLBS, where it was noted that § 87(2)(b) resisted arrest. PO Daniels did not recall what § 87(2)(b) was doing to resist arrest. PO Daniels did not believe that § 87(2)(b) had any injuries pertaining to the incident, but PO Chen recently informed her that his leg had been broken. PO Daniels saw no evidence of this during the incident. She did not know whether § 87(2)(b) was under the influence of any substance at the time of the incident.

LT John Sharkey (Enclosures 16A-B, 17A-B)

Lieutenant John Sharkey, a § 87(2)(b)-old white male, was interviewed at the CCRB on May 22, 2008. On November 21, 2007, LT Sharkey worked a tour of 0645 by 1530 hours and was assigned as the desk officer in the 77th Precinct. He was working alone, was dressed in uniform, and was not assigned to a motor

vehicle at all on that date. He does not work with an assistant desk officer. LT Sharkey had no entries in his memo book regarding this incident and no recollection of the incident. LT Sharkey did not have his memo book at the time of his CCRB interview. He explained that he was working on the desk, so the command log is his memo book for the day. A photograph of § 87(2)(b) was presented for LT Sharkey, but he did not recognize § 87(2)(b) at all. LT Sharkey then explained his duties as the desk officer; he stated that he is responsible for and supervises everything that occurs inside the stationhouse. He also is responsible for making entries in the command log and documenting arrests in the log. LT Sharkey explained that occasionally other supervisors sometimes make entries in the log or take over the log when he is relieved for a break. If other supervisors enter arrests into the command log, he is usually present and observes this unless he is on a break. With regard to injured prisoners, LT Sharkey is responsible for making sure EMS is called so the prisoner obtains medical attention. LT Sharkey stated that if he observes any injuries on a prisoner, he immediately requests medical attention. A person does not have to request it if the injury is observed. Lt Sharkey did not recall specifically on November 21, 2007 whether PO Chen brought in any injured prisoners. He was informed that § 87(2)(b) sustained an ankle injury, but he did not recall any prisoner having to be carried or assisted into the precinct. LT Sharkey did not recall any prisoners requesting medical attention on the incident date. He stated that he calls for EMS for prisoners often and he does not recall this incident specifically. LT Sharkey explained that the holding cells are around the corner from where he is seated at the desk, but he can observe them on camera from the desk. The cameras are black and white, and they are closed circuit and do not record. LT Sharkey can also hear what is going on in the cells from where he sits. LT Sharkey then viewed § 87(2)(b)'s entry in the command log, but he stated that the entry was made by another officer because it was not his handwriting.

PO Edwin Diaz (Enclosures 18A-B, 19A-B)

Police Officer Edwin Diaz, a § 87(2)(b)-old Hispanic male, was interviewed at the CCRB on July 23, 2008. On November 21, 2007, PO Diaz worked a tour of 0705 by 1540 hours and was assigned as arrest processing at 0710 hours. He was working alone and was dressed in uniform. PO Diaz remained inside the stationhouse and was not assigned to a motor vehicle. PO Diaz did not have any entries in his memo book pertaining to this incident and he had no recollection of the incident. A photograph of § 87(2)(b) was then presented to PO Diaz, but he did not recognize him. PO Diaz described that his duties involve taking prisoners to the bathroom, providing them with their meals, and dealing with problems with fingerprinting and other arrest processing. He also keeps track of prisoners if they are taken to different cell areas and makes sure they are all accounted for. He also gets the prisoners ready for transport when needed. PO Diaz stated that when a prisoner appears injured or complains of injury, it is his responsibility to notify the arresting officer to obtain medical attention. He did not recall any prisoners expressing or appearing to be injured on November 21, 2007. He did not recall any prisoner having difficulty walking or moving around. PO Diaz explained that if a prisoner in the holding cells was yelling out, the Desk Officer would be able to hear the commotion because the desk is situated close to the cells. PO Diaz could not recall anything remarkable occurring on this date. About 3 hours later, at 1010 hours, he had a post change and was out on patrol. PO Diaz is familiar with PO Chen and PO Daniels, but he could not recall if they brought in any prisoners on November 21, 2007. PO Diaz also explained that if a prisoner has evidence of pepper spray, he would wash the prisoner's eyes out. PO Diaz did not recall any prisoner asking him for medical attention on November 21, 2007.

IAB Case File (Enclosure 27A)

The investigator reviewed the IAB case file. § 87(2)(b) agreed to release his medical records to IAB, and he also agreed to be interviewed & photographed by IAB. Copies of the Sprint, § 87(2)(b)'s arrest photo, the OLBS, the UF 61, and BADS printouts § 87(2)(b)'s arrest history) were included. Reports were enclosed which documented the Investigating Officer's actions (running BADS, reviewing documents, etc). The Investigating Officer's report, prepared by Det. Lesly Honore, states that "at the above time & date, the I/O conferred with D.I. Keane CO of Group 54. D.I. Keane informed the I/O that this log will be forwarded to CCRB for investigation. The C/V made no allegation of force on the part of the officer. PO Hernandez of the Command Center was updated regarding the status of the callout." The report was signed & dated 12/14/07. A second report notes that the I/O delivered the Medical Request Release to § 87(2)(b) to § 87(2)(b) in Medical Correspondence § 87(2)(b).

On 12/14/07 at 11:30am, the I/O conferred with § 87(2)(b)'s attorney, § 87(2)(b), who stated that IAB could speak with § 87(2)(b). § 87(2)(b) was interviewed at § 87(2)(b) by Det. Lesly Honore, who was accompanied by Sgt. Paler, on 12/14/07 at 12:20pm. § 87(2)(b) stated that as he was walking on Pacific Street on 11/21/07 at 8-8:30am, he was approached by two officers, a male and a female, in uniforms who emerged from a car. § 87(2)(b) stated that he was neither high nor intoxicated at this time. He was carrying a bag of "personal stuff," including CDs and DVDs. The male officer instructed him to stop and frisked him. § 87(2)(b) asked why he was being stopped but the male officer gave no reason and yelled numerous times for § 87(2)(b) to put his hands behind his back. The male officer had one of § 87(2)(b)'s hands behind his back. According to § 87(2)(b) he was not acting loud or boisterous. § 87(2)(b) stated that he "cooperated" with the officers and did not do anything threatening. He denied resisting arrest; he only questioned why he was being arrested. The female officer then maced § 87(2)(b) but he did not know why because he gave "no resistance." § 87(2)(b) was then thrown to the ground by the male officer. The officer "kept forcing me" into the ground. Somehow, the male officer landed on § 87(2)(b)'s leg, which caused it to snap. § 87(2)(b) stated that the officer "jumped" on him, but when questioned further he stated that the officer fell and "landed" on top of him. § 87(2)(b) believed that the male officer's leg landed on the back part of his right ankle; however, he stated that he "could not see really good, being I was maced up."

§ 87(2)(b) stated that there was a witness (a woman's voice) who was asking why the officers were "doing that to him, let him go." However, § 87(2)(b) did not know who this person was and he could not see. When asked if any officers punched or kicked § 87(2)(b) he stated that, "I think he might have hit me at the time, but I was so distorted and in a lot of pain." At the scene, § 87(2)(b) told the officer, "My leg is in pain, I cannot walk," because the officers wanted him to walk to the patrol car. The officers dragged § 87(2)(b) to the patrol car and transported him to the precinct. There, he again told the officers that he could not walk and was in a lot of pain. § 87(2)(b) could not see or walk. The officers dragged § 87(2)(b) into the precinct and sat him in a chair. There, he told the officers that he wanted to go to the hospital. The officers told § 87(2)(b) that he was going to see the judge and the judge would let him go anyway. The officers cleaned the mace from § 87(2)(b)'s face, removed his shoelaces and belt, and placed him in "the pen." § 87(2)(b) went to the hospital "3 days later" and then went to Central Booking. § 87(2)(b) stated that from the first day on, he repeatedly asked to go to the hospital but did not go to § 87(2)(b).

On § 87(2)(b) § 87(2)(b) was removed to § 87(2)(b), where he received x-rays. The doctors stated that § 87(2)(b) had a fractured ankle and he would need surgery. Doctors put a splint on and gave § 87(2)(b) crutches. He was brought back to the precinct and spent another 2 days there. On Monday, 11/26/07, § 87(2)(b) was brought to Central Booking. § 87(2)(b) was "put through the system as a walk through" and was released from court.

After being arraigned and released, § 87(2)(b) went to the hospital, where he was admitted and diagnosed with a fractured right foot. § 87(2)(b) could not offer any explanation about where he was prior to going to the hospital after being released. § 87(2)(b) was shown a photo array, during which time he identified PO Darryl Chen as the officer who threw him on the ground. § 87(2)(b) signed medical release forms and the interview was concluded. § 87(2)(b) stated that PO Chen was a "regular in the neighborhood" and he recognized him from previous interaction. Three photographs were also enclosed in the case file - one was of § 87(2)(b) and the other two were of his right leg, which was in a cast.

Medical Records (Enclosures 20A-W)

The investigator received § 87(2)(b)'s medical records. The reports from § 87(2)(b) document that § 87(2)(b) complained of an injury of his left ankle/leg - however, § 87(2)(b) was subsequently treated for an injury to his right ankle, and therefore, it seems as though the initial evaluation erroneously documented a left ankle injury rather than a right ankle. The FDNY pre-hospital care report (#§ 87(2)(b)) states that on November 23, 2007 at 1535 hours EMS responded to the PCT. Cause of injury/illness was a fight/assault, and § 87(2)(b) complained of pain and swelling. The narrative states that that a § 87(2)(b)-old male patient was found sitting in Precinct cell complaining of pain to his ankle. He stated that he was in an altercation with the Police Department, during which time he twisted his ankle and someone "fell on top of

it" two days ago. § 87(2)(b) denied having any other injuries. § 87(2)(b) was transported to § 87(2)(b) with a police escort. His chief complaint was: "I hurt my ankle."

An Emergency Department triage form was completed on § 87(2)(b). § 87(2)(b) was transported by EMS and was accompanied by the NYPD. § 87(2)(b) described that he, "Twisted left ankle while I was in an altercation with NYPD." The Emergency Physician Record for the same date was his ankle injury, which occurred 2 days ago while "wrestling with police." § 87(2)(b)'s condition was "painful, unable to bear weight." § 87(2)(b)'s past history includes cigarettes and drugs. He received crutches and a splint, applied by an Orthopedist. § 87(2)(b)'s x-rays showed a distal right fibula fracture. He was seen by Orthopedics, "reduced" (bone realignment), and placed in a splint. § 87(2)(b) was directed to follow-up in clinic on § 87(2)(b). "Will need operative repair... pt. is aware of plan." The patient was released in NYPD custody.

§ 87(2)(b)'s Orthopedic Emergency Department consult is noted as § 87(2)(b). § 87(2)(b) was noted a crack abuser, who last used 2 days prior to presentation. He was resisting arrest when a police officer tackled him. He showed moderate swelling to his right ankle, which was determined to be a fracture. § 87(2)(b) was informed that he will require surgery in the near future. § 87(2)(b)'s pre-operative records from § 87(2)(b) shows that § 87(2)(b) claimed to drink 1-6 drinks of beer or vodka daily, smoke 1 pack of Newport cigarettes daily, and use both crack cocaine and marijuana daily. § 87(2)(b)'s records from § 87(2)(b) document his surgical procedure.

The investigator submitted § 87(2)(b)'s medical records to Dr. Laura Goldfetter at the Medical Examiner's Office, but she was unable to make a determination in regards to how § 87(2)(b) may have sustained his ankle injury.

Police Documents

UF 61, OLBS (Enclosures 22A-B, 24A-B)

The UF 61 and OLBS prepared for § 87(2)(b)'s arrest document that § 87(2)(b) was arrested at 7:40AM in front of 1280 Pacific Street by PO Darryl Chen. The narrative states that PO Chen observed § 87(2)(b) in possession of 1 glass crack pipe containing crack cocaine residue in plain view. § 87(2)(b) threw and smashed the evidence to the ground to prevent PO Chen from recovering it. § 87(2)(b) also resisted arrest by swinging his arms so PO Chen could not handcuff him. Physical force was used to prevent escape.

Roll Call, Command Log, PHPR (Enclosures 23A-L, 25A, 26A)

The 77th Precinct's tour 1 roll call documents that PO Chen was assigned as conditions and PO Daniels was assigned as summons auto. LT Sharkey worked at the desk, and PO Diaz was assigned as the laps operator. The command log contains an entry at 0815 hours on November 21, 2007 documenting § 87(2)(b)'s arrest. His condition was noted as "good/app normal." It also notes that on November 23, 2007, § 87(2)(b) was transported to § 87(2)(b). On November 24, 2007, he was taken to Central Booking but he returned to the stationhouse on November 25, 2007.

Notice of Claim (Enclosures 11A-F)

A notice of claim was filed with NYC's Comptroller's Office against New York City, the NYPD, the Health and Hospitals Corporation, and against PO Chen. § 87(2)(b) alleged that these entities were at fault for negligence, recklessness, and intentional conduct which included assault, battery, and false imprisonment. § 87(2)(b) claimed that as a result of the incident, he suffered blurred vision, broken teeth, a right fibular fracture with eight screws and a metal plate inserted, rib fractures, unspecified back, head, chest, and knee injuries, and psychological injuries.

Status of the Criminal Charges (Enclosures 28A-E)

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Criminal Conviction Histories (Enclosures 29A-MMM)

§ 87(2)(b) §§ 86(1)(3)&(4) § 87(2)(c)

CCRB Histories (Enclosures 4A-C, 5A)

Officers

PO Darryl Chen has been a member of the NYPD for 15 years, and he has no substantiated allegations in his CCRB history. PO Trina Daniels has been a member of the NYPD for 10 years, and she has no substantiated allegations in her CCRB history.

§ 87(2)(b)

This is the only CCRB complaint filed by § 87(2)(b)

Conclusions and Recommendations

Subject Officer Identification

§ 87(2)(b) identified PO Chen as his arresting officer; he recognized PO Chen from previous interaction and police documentation confirmed PO Chen's involvement in the incident. Police documents identified PO Daniels as PO Chen's partner.

Disputed Facts

§ 87(2)(g)

Assessment of the Evidence

§ 87(2)(g)

§ 87(2)(b) alleged that PO Chen approached him, and he and PO Daniels immediately searched him, as well as the bags he was carrying. § 87(2)(b) stated that despite his cooperation with the officers during this process, PO Chen and PO Daniels pushed him to the ground. § 87(2)(b) stated that PO Chen somehow landed on his ankle during the struggle, causing him to sustain an injury. According to § 87(2)(b) PO Daniels also pepper sprayed him, though he did not know why because he did not resist at any point.

PO Chen did not remember any of the details of this incident, and viewing arrest paperwork did not refresh his memory. He attributed this to the large numbers of arrests he makes. He did not recall § 87(2)(b) ever sustaining an injury or needing medical assistance. PO Daniels remembered more about the incident; however, she did not claim responsibility for stopping § 87(2)(b) and stated that PO Chen had made the observations and it was his decision to approach § 87(2)(b). PO Daniels denied that § 87(2)(b) was frisked or searched on the scene, and she denied ever using pepper spray against § 87(2)(b). She added that had she utilized her pepper spray, she would remember doing so. She also did not recall any force being used against § 87(2)(b) and denied having any knowledge of him sustaining an injury.

§ 87(2)(g)

§ 87(2)(b) He described it as occurring incident to the struggle and fall to the ground but he also purported that PO Chen deliberately jumped on top of him. In his Notice of Claim, § 87(2)(b) complained of several other injuries which were not documented in his medical records and which he failed to mention to the investigator. He claimed to have requested medical attention numerous times, on the scene, in the patrol car, and at the 77th Precinct; however, his request was not honored until § 87(2)(b). Neither PO Chen nor PO Daniels recalled § 87(2)(b) requiring or requesting medical attention at any point during the incident. Neither LT Sharkey nor PO Diaz had any recollection of § 87(2)(b) or of any prisoner repeatedly requesting medical attention in regards to this incident. According to Patrol Guide Procedures 208-03, and 210-04, officers are required to ensure that prisoners who appear to be ill or complain of injuries are provided with proper medical attention (Enclosures 1A-B, 2A-G). According to Patrol Guide Procedure 212-95, if and when pepper spray is used against a prisoner, officers are required to call EMS to treat the prisoner (Enclosures 3A-D). § 87(2)(g)

Allegations Not Pleaded

§ 87(2)(g)

Allegation A: PO Darryl Chen stopped § 87(2)(b)

§ 87(2)(g)

Allegation B: PO Darryl Chen used physical force against § 87(2)(b)

Allegation C: PO Trina Daniels used physical force against § 87(2)(b)

Allegation D: PO Trina Daniels pepper sprayed § 87(2)(b)

Neither PO Chen nor PO Daniels recalled using physical force or pepper spray against § 87(2)(b) though he claimed that these things occurred. § 87(2)(g)

Allegation E: PO Darryl Chen did not obtain medical treatment for § 87(2)(b)

Allegation F: PO Trina Daniels did not obtain medical treatment for § 87(2)(b)

§ 87(2)(b) stated that he requested medical attention from PO Chen and PO Daniels several times, and he also claimed to have requested it several times while he was being held at the 77th Precinct. None of the officers interviewed recalled this. § 87(2)(g)

Allegation G: Officers did not obtain medical treatment for § 87(2)(b)

§ 87(2)(b) claimed that he requested medical attention from numerous officers during the time he spent at the 77th Precinct, but he was unable to name or describe any officer specifically. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: